

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES C. PARKS,

Plaintiff,

v.

TULALIP RESORT CASINO,

Defendant.

Case No. C09-1219RSL

ORDER GRANTING
MOTION TO DISMISS

I. INTRODUCTION

This matter comes before the Court on a motion to dismiss filed by defendant the Tulalip Resort Casino. Defendant contends that plaintiff's claims are barred by collateral estoppel, and even if they are not, the Court lacks subject matter jurisdiction over the matter based on tribal sovereign immunity. Defendant further argues that even if the Court had jurisdiction, plaintiff has failed to exhaust his administrative remedies and has sued under laws that do not apply to defendant.

For the reasons set forth below, the Court grants defendant's motion.

II. DISCUSSION

A. Background Facts.

Plaintiff contends that he experienced discrimination based on his race during his

1 employment with defendant. He worked for defendant from 2003 until, he alleges, he
2 was constructively discharged in September 2008.

3 In September 2007, plaintiff filed a complaint against defendant in this district.
4 Parks v. Tulalip Resort Casino, Case No. 07-1406RSM. Plaintiff alleged discrimination
5 based on his race, which he identified as African American/Native American. By order
6 dated March 19, 2008, the Honorable Ricardo S. Martinez granted defendant's motion
7 and dismissed plaintiff's complaint based on tribal sovereign immunity. (Dkt. #22).

8 After his lawsuit was dismissed, plaintiff filed two successive suits in Tulalip
9 Tribal Court alleging discrimination. Both complaints were dismissed with prejudice and
10 plaintiff did not appeal either dismissal.

11 Plaintiff filed a second federal court action in February 2009, contending that he
12 was subjected to race discrimination. This Court construed the suit and a subsequently
13 filed motion as a request to reopen the first federal lawsuit, so the Court transferred the
14 matter to Judge Martinez to determine if the first case should be reopened. Judge
15 Martinez declined to reopen the first case. Plaintiff filed this action, his third federal
16 lawsuit, in August 2009.

17 **B. Analysis.**

18 The issue of tribal sovereign immunity is jurisdictional. See, e.g., Pan Am. Co. v.
19 Sycuan Band of Mission Indians, 884 F.2d 416, 418 (9th Cir. 1989), overruled on other
20 grounds by C&L Eters., Inc. v. Citizen Band Potawatomi Indian Tribe, 532 U.S. 411
21 (2001). The Court must dismiss the matter if it lacks subject matter jurisdiction. Fed. R.
22 Civ. P. 12(b)(1). In evaluating a motion to dismiss for lack of subject matter jurisdiction,
23 the Court may consider affidavits and testimony outside the pleadings to determine
24 whether jurisdiction exists. See, e.g., St. Clair v. City of Chico, 880 F.2d 199, 201 (9th
25

1 Cir. 1989).

2 Defendant contends that collateral estoppel applies to the issue of whether it is
3 entitled to sovereign immunity. Collateral estoppel applies if (1) the issue necessarily
4 decided at the previous proceeding is identical to the one sought to be relitigated, (2) the
5 first proceeding ended with a final judgment on the merits, and (3) the party against
6 whom collateral estoppel is asserted was a party or in privity with a party to the first
7 proceeding. See, e.g., Hydranautics v. FilmTec Corp., 204 F.3d 880, 885 (9th Cir. 2000).
8 In plaintiff's first suit, Judge Martinez held that defendant is an arm of the Tulalip Tribes,
9 and as such, is entitled to sovereign immunity. This case presents the same issue. The
10 first action ended with a final judgment on the merits, and the parties were the same in
11 both cases. Accordingly, collateral estoppel precludes plaintiff from relitigating the issue
12 of whether defendant enjoys sovereign immunity.

13 Even if collateral estoppel were inapplicable, the Court would still conclude that
14 defendant is entitled to sovereign immunity. Tribes are immune from lawsuits in federal
15 courts absent Congressional abrogation or a clear waiver by the tribe. See, e.g., Kiowa
16 Tribe v. Mfg. Technologies, Inc., 523 U.S. 751, 754 (1998). The Supreme Court has
17 extended tribal sovereign immunity to tribes' commercial and governmental activities.
18 Id. at 760. Immunity extends to entities established by a tribe to conduct activities when
19 the entity functions as an arm of the tribe. See, e.g., Allen v. Gold Country Casino, 464
20 F.3d 1044, 1047 (9th Cir. 2006). In this case, as in *Allen*, defendant has presented ample
21 evidence to show that it is a casino dependant upon several layers of government
22 approval, its purpose is to promote tribal economic development, among other things, and
23 the Casino has served that purpose. Id. at 1046; Sheldon Decl. at ¶¶ 7, 9, 10; Kettler
24 Decl. at ¶¶ 2, 3; Jones Decl. at p. 142. For those reasons, defendant has established that it

1 functions as an arm of and under the auspices of the tribe.

2 Plaintiff has not argued that Congress abrogated the tribe's sovereign immunity.
3 Instead, he argues that the tribe has waived it through the Corporate Charter of the Tulalip
4 Tribes of the Tulalip Reservation (the "Charter"). Plaintiff has not cited any evidence to
5 support his contention that defendant was formed under the Charter, and defendant has
6 filed un rebutted evidence that it was not. Instead, it is a governmental agency of the
7 Tulalip Tribes. Kettler Decl. at ¶ 2-3; Sheldon Decl. at ¶ 7; Second Sheldon Decl. at ¶ 2.
8 Accordingly, plaintiff has not shown that defendant has waived its sovereign immunity.
9 Based on that immunity, plaintiff's complaint must be dismissed for lack of subject matter
10 jurisdiction. Because dismissal is appropriate on that basis, the Court need not consider
11 defendant's other arguments in favor of dismissal.


12 Finally, the Court notes that defendant did not move for sanctions against plaintiff,
13 even though he filed a second lawsuit after the first one that raised the same issue was
14 dismissed with prejudice. If plaintiff files another lawsuit alleging employment
15 discrimination against defendant, the Court will consider whether to impose sanctions
16 against plaintiff for violating General Local Rule 3 and Federal Rule of Civil Procedure
17 11, which require that all claims have factual support and be warranted by existing law or
18 by a nonfrivolous argument for extending, modifying, or reversing existing law or for
19 establishing new law. If imposed, sanctions may include dismissing any subsequently
20 filed suit and/or requiring plaintiff to pay the costs defendant incurred defending against
21 such a suit.

22 **III. CONCLUSION**

23 For all of the foregoing reasons, the Court GRANTS defendant's motion to
24 dismiss (Dkt. #19). The Clerk of the Court is directed to enter judgment in favor of
25

1 defendant and against plaintiff.
2

3 DATED this 26th day of April, 2010.
4

5
6 
7 Robert S. Lasnik
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 ORDER GRANTING
MOTION TO DISMISS - 5